The 27th/28th July, 1982

No. 9(1)82-6Lab./6605.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Frontier Rubber Factory, NIT, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK,

PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD.

Reference No. 463 of 1980

between

SHRI KANHAYIA LAL, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S FRONTIER RUBBER FACTORY, NIT, FARIDABAD

Shri Sagar Ram Gupta for the workman.

Shri A. S. Chadda for the respondent-management.

AWARD

This reference No. 463 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/99-80/5114, dated 29th September, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947 existing between Shri Kanhayia Lal, workman and the respondent-management of M/s Frontier Rubber Factory, NIT, Faridabad. The term of the reference was :—

> Whether the termination of services of Shri Kanhayia Lal was justified and in order ? If not, to what relief is he entitled?

Notices were issued to the parties after receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman is working in the factory for the last 3 years and his work and conduct was always satisfactory and was drawing salary Rs. 250 per month. The employer terminated the services of the workman abruptly by way of dismissal on 20th June, 1980 which is violation of law and principle of natural justice, no charge-sheet was given. No opportunity was provided to the workman to explain himself. So the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the respondent has not terminated the services of the workman but he left the job voluntarily by taking his full and final on 20th June, 1980. The present claim does not fall within the ambit and scope of section 2-A of the Industrial Disputes Act. The workman, was not abruptly dismissed by the respondent. The truth is that the employee concerned was caught red handed while stealing of pair of Hawai Chappals from the factory on 20th June, 1980. The respondent decided to report the matter to the police but the workman concerned agreed that his services may be dispensed with and he agreed to take full and final accounts from the management with the request that the management should not report the matter to the police. The workman concerned took his full and final dues from the respondent and relinquished the service voluntarily. The termination of the services of the workman is justified and bona fide circumstances. The respondent has lost confidence on the part of the respondent.

On the pleadings of the parties, the following issues were framed :—

(1) Whether it is a case of voluntarily abandonment of service. If so, to what effect ?

(2) As per reference ?

(3) Relief ?

ISSUE NO. 1:

The representative of the respondent argued that the workman has not come in the Court with the clean hand and he has

concealed the fact of theft. He has not mentioned this fact in the demand notice or in the claim statement. The workman admitted this fact in his statement as WW-1 in his cross-examination. He has admitted this fact in his cross-examination that the manufactured chappals keep on paying at the place of work. He also admitted in his cross-examination that Exhibit M-2 bears his signature at point 'X' and on Exhibit M-1 at point 'X'. The documents the letter, dated 20th June, 1980 in which the workman has admitted his guilt that he stolen a pair of Hawai Chappals and he was caught red handed at the spot and caused loss to the respondent. So terminated the services and Exhibit M-2 is a voucher of his full and final payment. He further admits in his cross-examination that there was a lunch brake at 12.30 p.m. and he was wearing a brand new Chappals when he went out. He further admits that he was taken to Shri Madan Lal, partner of the firm and reported the matter of stolen chappals and on this report Shri Madan Lal wanted to ring up to the police. The respondent witness Shri Ram Chand MW-1 has stated in his statement that the workman was a permanent employee and on 20th June, 1980 at lunch time he came out from the factory wearing brand new chappals whereas he was wearing shoes in the morning. The gate-keeper retained him at the gate and took him to the office of Shri Madan Lal, partner of the firm, where other persons were also present. The workman admitted his mistake before the partner of the firm for the theft of chappals when he partner of the firm wanted to ring up the police to report the matter. The workman stated to the partner that he may not be handedover to the police and be given his accounts. After the admission of the workman the letter, Exhibit M-1 was given to the workman which was read out to him and explained to him as correct and signed at place "X". The gate-keeper Shri Saran and Vijender signed the documents as witness. The voucher, Exhibit M-1 was prepared by the witness and the workman took his full and final dues and signed the same. He further argued that MW-2 Shri Saran Singh, gate-keeper of the factory corroborated the statement of MW-1 and stated that he retained him at the factory gate with new brand chappals at lunch time and took him to Shri Madan Lal, partner of the firm. He further argued that after the admission of the workman about the theft in his cross-examination nothing remained left when he took his full and final accounts voluntarily otherwise he has to face criminal trial in the Court. The respondent has taken the lenient view and gave full and final to the workman. He further argued that the company employs persons of good character and did not employ thieves in the factory. Today the workman had stolen one chappal and it could be possible that he could steal more valuable thing if he was not turned out of the factory. So the workman of his own accepted the full and final and agreed to leave the job of the respondent.

The workman's representative argued that it is admitted fact that the workman was an old and permanent employee of the factory and serving for the last 3 years and he was drawing Rs. 250. He was not paid any thing except Rs. 139.75,— vide Exhibit M-2 which cannot be a full and final payment of the workman as alleged by the respondent. It was a theft case and the respondent should have given the charge-sheet and made the enquiry about the theft before removing from service. The workman was abruptly dismissed from the service and it was not voluntarily leaving the job but it was under pressure. The theft was not proved by any way and it cannot be said that the workman was a thief. It may be also possible that the workman had purchased the chappal from the market and had come in the factory. The respondent should havt enquired the matter about the person. His conduct and character was quite satisfactory in the last three years. So it is not voluntary abandonment of job of the workman.

After hearing the arguments of both the parties, I am of the view that when the workman has admitted the fact of theft in his cross-examination before the partner of the firm then what enquiry

could be made about this fact. The workman had left the service of his own in a fear to face the criminal proceedings in the Court. The workman has admitted the signature on Exhibit M-1 and M-2 clears the fact that he has left the job volunarily. So the issue is decided in favour of the respondent and against the workman.

ISSUE NO. 2:

After deciding the issue No. 1 in favour of the respondent against the workman, the respondent is justified in his order, Exhibit W-1, dated 20th June, 1980. The representative of the workman argued this issue that the workman was paid Rs. 139.75 Paise as dues and nothing else. The workman was a permanent employee and if terminated he should have given at least retrenchment compensation to his full and final and not the same amount which he was paid at the time of dismissal. I agree with the arguments of the workman's representative. The workman should have been given at least the retrenchment compensation due to him for his service at the time of dismissal. So the workman is entitled to receive his retrenchment compensation from the respondent and not his reinstatement because he has voluntarily left the job and secondly if such persons are allowed to be reinstated in the employment then it is an encouragement to such an employee and they will again do the same thing. Such thing should not be encouraged for the harmony of industrial atmosphere. No body likes to keep any such employee who has stolen something from the factory. So the workman is not entitled for his reinstatement except his retrenchment compensation.

This be read in answer to this reference.

The 15th June, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1433, dated 26th June, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6 Lab./6606.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Jawala Textile Mills, Ltd., Gurgaon:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 2 of 1981

between

SHRI RAM LAKHAN, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S JAWALA TEXTILE MILLS, LTD., GURGAON.

Present:

Shri Shardha Nand for the workman.

Shri M. Das for the respondent-management.

AWARD

This reference No. 2 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/94-80/65018, dated 24th December, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Ram Lakhan, workman and the respondent-management of M/s Jawala Textile Mills, Ltd., Gurgaon. The term of the reference was:—

Whether the termination of services of Shri Ram Lakhan was

justified and in order? If not, to what relief is he entitled ?

After receiving the reference order, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was getting Rs. 300 per month as wages and on 9th July, 1980 he met with an accident and lost one arm. After treatment the workman submitted fitness certificate on 4th September, 1980, but the respondent refused to give duty and the termination is bad in law and against the principles of natural justice. The workman is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman was employed on 24th April, 1980 on daily wages at the rate of Rs. 11.60 per day. The workman met with an accident on 8th July, 1980 while working on the machine and lost one arm. The workman was covered under the E.S.I. and medical board of ESI has been constituted on 3rd October, 1980 and fixed the permanent disablement for Rs. 5 per day. The workman reported for duty on 4th September, 1980 along with fitness certificate issued by the ESI but he was discharged from the service as he was incapable of performing his duties since he has only one arm to work with. There was no such job where he could be gainfully employed. So the management has discharged him from services.

The workman was discharged from the service, not for any mis-conduct but due to incapability in performing his job. So the action of the respondent is legal and proper.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the workman is permanent or temporary? If so, to what effect ?

(2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

(3) Relief ?

ISSUE NO. 1:

The representative of the respondent argued on this issue that the workman appeared as WW-1 and admitted in his cross-examination that he was employed on 28th April, 1980 on daily wages at Rs. 11.60 Paise per day and he met with an accident on 8th July, 1980 clearly proves that he was a temporary employee on daily wages. The respondent witness Shri K. R. Bhardwaj, General Manager of the factory as MW-4 has stated that the workman employed for 3 months. The appointment letter, Exhibit WW/4-1 clears the position which was also admitted by the workman in his cross-examination and he was appointed on 28th April, 1980 and worked up to 8th July, 1980 and then he met with an accident on the machine and he used to get Rs. 11.60 Paise per day. The statement of the respondent witness corroborates the admission of the workman in the cross-examination of the workman clearly shows that the workman was not permanent employee, but was only a temporary employee. The workman's representative argued on this issue that the workman worked in he Blow Room and was getting Rs. 300 per month. He was employed permanently and the respondent now took the wrong plea that he was temporarily employed.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that after the admission of the workman that he was employed on 28th April, 1980 and he met with an accident on 8th July, 1980 and he used to get Rs. 11.60 per day clears the position that the workman was temporarily employed and not permanently. The workman produced one document, WW-1/3, in which he has stated that he was temporarily employed and now he be given permanent card clearly proves that the workman was employed as temporary employee, by his admission. So the issue is decided in favour of the respondent and against the workman.

ISSUE NO. 2:

The respondent's representative argued on this issue that the workman was working on machine on 8th July, 1980 and met with an accident by which he lost one arm. The respondent sent the information to the E.S.I. Department,—vide Exhibit M-4/1 and Exhibit M-1. The E.S.I. Department sent the letters, Exhibit M-1 and M-2 to the respondent. The workman remained under the treatment of E.S.I. as he was covered under the E.S.I. Scheme with number 2848553 and when he was fully recovered then he came to the respondent on 4th September, 1980 along with fitness certificate issued by the E.S.I. authority. But as he was incapable in his duty so his services were discharged by the respondent. There was no such job where this workman could be adjusted, because one hand person cannot work in the factory at any job. The medical board of E.S.I. has been constituted on 23rd December, 1980. They had fixed pension benefit Rs. 5 per day. The photostat copies are Exhibit M-5 and Exhibit M-4 clears the position. The respondent has called two witnesses of E.S.I. Department, Manager, Local Office as MW-1 and MW-2 Shri Ram Phal, Clerk of the E.S.I., who has corroborated the story of the accident of the workman in their statement. So the services of the workman was not terminated but the workman was discharged from service as he was incapable for doing the job. The action of the respondent is legal and proper and the workman is not entitled for any relief.

The representative of the workman argued on this issue that the workman should be reinstated by the respondent even on humanitarian ground. It is correct that the workman met with an accident and lost one arm and the E.S.I. Department has given him Rs. 150 per month life long pension but in these days Rs. 5 is very small and the workman and his family could not run with this vigur amount. There are jobs with the respondent which can be given to the workman and this year is celebrated as disable person year and in this year the respondent should have sacrificed for this workman.

After hearing the arguments of both the parties, I am of the view that the respondent has proved their case. Even during the proceedings, I suggested and directed the representative of the respondent to adjust and accommodate the workman on humanitarian ground. The representative of the respondent during the proceedings of the case tackled the matter with the respondent-management but the respondent-management has totally refused to adjust the workman on any ground. I suggested the respondent to compensate the workman but the respondent argued that they could not compensate under the law, because they could not give less than the minimum wages and they could not include the pension of Rs. 150 of ESI in his wages because it is a different head. If he does so it will be illegal act on the part of the respondent. Under the law the workman is not entitled for any relief, because his services were discharged due to incapability to work. I can only decide the case under the law and not on humanitarian ground. So the workman is not entitled to any relief.

This be read in answer to this reference.

The 16th June, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1434, dated 26th June, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.